THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 21082 of 2006

Dated: 28-12-2006

Between:

Ganta Rama Rao and 14 others.

..... PETITIONERS

AND

The Commissioner for Prohibition
And Excise, Government of Andhra Pradesh,
Hyderabad and 5 others.

.....RESPONDENT

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 21082 of 2006

O R D E R:

This writ petition is filed aggrieved by the action of the respondents 1 to 4 in proposing to grant Form 2-B licence for establishment of Bar and Restaurant in Rajam Nagar Panchayat, Srikakulam for the excise year 2006-2007.

The facts, in brief, are as under:

The 3rd respondent-District Collector, Srikakulam issued notice of auction dated 27-05-2006 for grant of lease of right to sell Indian Made Foreign Liquor by shop under Rule 5 of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short 'the Rules'). Altogether 232 shops were notified in Srikakulam Revenue District including 16 shops in Rajam Mandal. The petitioners herein being the highest bidders in respect of the shops in Rajam Mandal were granted licences in Form A-4 for the respective shops and they have been carrying on business.

While so, it appears that the 6th respondent herein made an application for grant of licence in Form 2-B for establishment of a Bar and Restaurant in Rajam Nagar Panchayat and the same was being processed by the respondents 1 to 4. Aggrieved by the said action, this writ petition has been filed.

It is to be noted that under Rule 4 of the Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short 'Bar Rules'), the licence in Form 2-B for establishment of a Bar and Restaurant may be granted only in Municipalities and within a belt area of 2 Kms. of periphery of such Municipalities. Such

licence can also be granted in Municipal Corporations and within a belt area of 5 kms. of the periphery of such Municipal Corporations and in Tourism Centers as notified by the Department of Tourism of the State Government or Central Government.

In view of the said statutory provision, it is contended by the petitioners that no licence for establishment of a Bar and Restaurant can be granted in Rajam, which is neither a Municipality nor a Municipal Corporation and does not come within the purview of Rule 4 of the Bar Rules.

A counter affidavit has been filed by the respondents 1 to 4 stating that the grant of bar licence is governed by the Rules framed in G.O.Ms.No.997 dated 24-05-2005 i.e. Bar Rules. It is further stated that the Rules for grant of licences in Form A-4 and Form 2-B are quite different and distinct and both are governed by different Rules. Hence, the 1st respondent is competent to consider any application seeking licence in Form 2-B. Since admittedly Rajam is declared as Nagar Panchayat, there cannot be any prohibition for grant of licence in Form 2-B. The petitioners failed to establish any violation of law or Rule in considering the application for grant of licence. It is not open to the petitioners to make a complaint on the ground that their business would be affected if any bar licence is granted in the area/locality in respect of which the petitioners were issued A-4 licences.

The 6th respondent, who got himself impleaded, filed a separate counter affidavit stating that the Commissioner of Prohibition and Excise by proceedings dated 10-12-2006 issued prior clearance for grant of licence in his favour and the same is valid for a period of 45 days. He has also paid a sum of Rs.10,000/- towards processing/inspection charges and if the process of grant of licence is interdicted at this stage, he would suffer irretrievable injury.

I have heard the learned counsel for both the parties in detail.

Admittedly, Rajam Mandal was declared as Nagar Panchayat under G.O.Ms.No.855 Municipal Administrative Urban Development Department dated 07-10-2005 in exercise of powers under Andhra

Pradesh Transitional Area and Smaller Urban Areas (Fixation of Criteria) Rules, 1995 read with Andhra Pradesh Municipalities (Gradation of Municipal Councils and Nagar Panchayats) Rules, 1994. Thus, with effect from 17-10-2005 the Rajam Grampanchayat was merged with four surrounding Gramapanchayats and was declared as Nagar Panchayat. If that be so, it is open to the respondents to grant Form 2-B licences for establishment of Bar and Restaurant in Rajam. The said fact has not been disputed by the petitioners. However, it is contended that since in the notification, dated 27-05-2006, issued under Rule 5 of the Rules for grant of A-4 licences, Rajam was notified as a Mandal and on the basis of the same, the petitioners have submitted their bids under an impression that no bar licences would be granted in the locality, the respondents cannot be permitted to take a different stand for the purpose of grant of Bar Licences.

From the material on record, it is clear that in the notification dated 27-05-2006 issued under Rule 5 of the Rules, Rajam was wrongly notified as a Mandal instead of Nagar Panachayat in spite of the fact that by that time Rajam Grampanchayat was already merged with the surrounding Gramapanchayats and was declared as Nagar Panchayat. It is not the case of the petitioners that they were not aware of the fact that Rajam was already declared as Nagar Panchayat. The averments in the affidavit filed in support of the writ petition make it very clear that the petitioners had knowledge about the fact that the Rajam was declared as Nagar Panchayat with effect from 17-10-2005. Having voluntarily participated in the auction pursuant to the notification dated 27-05-2006 and having obtained Form A-4 licences, they cannot turn back and raise an objection at this stage for grant of Bar Licences in
Form 2-B.

The plea of the petitioners that the bar licences if any granted would adversely affect their business cannot be a justifiable ground to issue a Mandamus restraining the respondents 1 to 4 from exercising the statutory powers conferred under Bar Rules. Absolutely no case is

made out to show that the impugned action of the respondents 1 to 4 in proposing to grant Form 2-B Icience in Rajam Nagar Panchayat is in violation of the statutory provisions. Hence, the relief as prayed for cannot be granted.

The writ petition is devoid of any merit and the same is accordingly dismissed. No costs.

G. ROHINI, J

Dated: 28-12-2006
Note: Issue C.C. in two days.
B/o
KLP